

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1029 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRABHAI HARIPRASAD

UPADHYAY

Versus

SAVITABEN CHHOTALAL BHATT

Appearance:

MR MB GANDHI for Petitioner

MR HC PANDYA for Respondent No. 1

None present for Respondent No. 2

MR AY KOGJE for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/11/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The original plaintiff - respondent No.1 filed a suit against the original defendant No.2 petitioner and original defendant Nos.1 and 3 - respondent Nos. 2 & 3,

for recovery of Rs.68,100/- in the court of City Civil Court at Ahmedabad. In the Civil Suit the original defendant No.3 - respondent No.3 filed his written statement in which he had admitted the claim of the plaintiff - respondent No.1 in toto. The original defendant No.2 - petitioner herein, in the suit, filed application in the trial court and prayed for passing of the decree as per the provisions of order 12 rule 6 of the Civil Procedure Code, 1908 against the defendant No.3 - respondent No.3. This application of the defendant No.2 - petitioner came to be dismissed by the learned trial court under its order dated 31st March, 1998. Against this order this Revision Application has been filed by the defendant No.2 - petitioner before this court.

3. From the written statements of the defendant No.3 - respondent No.3, I find that he has admitted the claim of the plaintiff - respondent No.1 in toto. The learned counsel for the - defendant No.3 - respondent No.3 Mr. A.Y.Kogje submitted that he has no objection in case on the admission of the claim of the plaintiff - respondent No.1 by the defendant No.3 - Respondent No.3 as stated in his written statement a decree is passed under order 12 rule 6 of the Civil Procedure Code, 1908 in favour of the plaintiff - respondent No.1. The learned counsel for the plaintiff - respondent No.1 has also submitted before this court that he has no objection in passing of the decree by this court in favour of the plaintiff respondent No.1 against the defendant No.3 - respondent No.3 on the basis of the admission of the claim made by the defendant No.3 - respondent No.3 of the claim of the plaintiff - respondent No.1 in his written statement.

4. From the provisions of rule 6 of order 12 of the Civil Procedure Code, 1908, I find that the court below on the admission of the party of the claim of plaintiff can pass judgment either on application of any party and without waiting for determination of any other question between the party. So the application filed by the defendant No.2 - petitioner for passing of the judgment on the basis of the admission of the defendant No.3 respondent No.3 in favour of the plaintiff respondent No.1 is maintainable. There is no provision that a codefendant in a suit cannot file an application for passing of the judgment against another codefendant where later admitted the claim of the plaintiff in the suit. I fail to see any justification in the approach of the trial court not to pass a judgment on the admission of the defendant No.3 in the suit in favour of the plaintiff on the ground that it is a discretion of the court. It

is true that the powers under order 12 rule 6 of the Civil Procedure Code, 1908 are discretionary but a judicial discretion and where the claim of the plaintiff in the suit has been admitted by the defendant No.3 in toto, the court should not have resisted itself from passing of the judgment in accordance with the said provision.

5. Taking into consideration the totality of the facts of the case, this Revision Application succeeds and the same is allowed. The impugned order dated 31/3/98 passed by the City Civil Court No.9 at Ahmedabad below Ex.68 in Suit No.3392/84 quashed and set aside. The application filed by the defendant No.2 petitioner is allowed and the suit of the plaintiff respondent No.1 of his claim as raised in the suit on the basis of the admission of the same by the defendant No.3 respondent No.3 is passed against the defendant No.3 Respondent No.3 under the provisions of order 6 rule 12 of the Civil Procedure Code, 1908. The trial court is directed to draw decree in favour of the plaintiff respondent No.1 against the defendant No.3 - respondent No.3 accordingly. The rule is made absolute. The parties are directed to bear the costs of both this Civil Revision Application and suit.

(S.K.KESHOTE, J.)

*pvv